

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 563 of 1996

in

SPECIAL CIVIL APPLICATION No 4352 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

CHANDRAKANT RANCHHODBHAI PATEL

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Appearance:

MR DA BAMBHANIA for Petitioner

MR SURESH M TRIVEDI for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE M.S.SHAH

Date of decision: 20/12/96

ORAL JUDGEMENT

Admitted. Mr. S.M. Trivedi, learned counsel

for respondent No.1 (original petitioner) waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against an order passed by the learned single Judge on September 21, 1995 in Special Civil Application No. 4352 of 1995. By the impugned order, the learned single Judge allowed petition filed by the first respondent directing his reinstatement. The appellant-State Government was also ordered to pay an amount of Rs.5000/- towards costs to the first respondent.

Shortly stated the facts are that pursuant to selection process made in the year 1993, the first respondent was selected by the Gujarat Public Service Commission for the post of Veterinary Officer in Gujarat Animal Husbandry Service, Class-II. In December 1993, he was called for examination by the Medical Board. He was, however, found fit for sedentary work. The competent authority conveyed the said decision to the first respondent and it was observed that since the first respondent was not fulfilling eligibility criteria, he could not be appointed. Being aggrieved by the said order, the first respondent approached this court by filing a petition and, as stated above, the petition was allowed.

When appeal came up for hearing on November 4, 1996, this court directed the Medical Board to examine the case of the first respondent and to submit a copy of report to this court. The said report has been received by this Court wherein it is mentioned that the first respondent is fit to discharge his duties as Veterinary Officer.

In light of the examination by Medical Board and the report submitted by it, we are of the view that the learned single Judge has not committed any error of law in passing the impugned order directing reinstatement of the first respondent. It is, therefore, directed that the appellant will now issue an order of appointment to the first respondent on or before January 1, 1997 and the first respondent will thereafter join the duty in pursuance of the said order.

The question then remains regarding order as to costs. Mr. Trivedi states that the first respondent does not insist for payment of costs of Rs.5,000/- as directed by the learned single Judge to pay to the first

respondent. Hence, so far as that part of the order of the learned single Judge is concerned, with the consent of the first respondent, it is hereby set aside.

Mr. Trivedi also states that, since the first respondent was not appointed, in the meanwhile he had obtained service elsewhere. He submitted that the first respondent does not claim back wages and he may be paid salary only after he joins service as Veterinary Officer but benefits, other than actual payment of salary, may be granted to him by treating him in continuous service. In our opinion, appropriate direction would be that the first respondent is at liberty to make a representation to the authorities and they will decide the said application in light of all the facts and attending circumstances.

For the foregoing reasons, the appeal is partly allowed to the aforesaid extent. The order of payment of costs of Rs.5,000/which was granted by the learned single Judge in favour of the first respondent is set aside whereas direction regarding appointment is confirmed. There shall be no order as to costs.

December 20,1996 (C.K. Thakker, J.)

(M.S. Shah, J.)

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